Safety Carrier, Inc. *and* Teamsters, Chauffeurs and Helpers Union No. 648, a/w International Brotherhood of Teamsters, AFL–CIO[1] and International Association of Machinists and Aerospace Workers Local 1015, AFL–CIO, Party to the Contract. Case 3–CA–15526

March 31, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT AND RAUDABAUGH

On August 30, 1991, Administrative Law Judge Robert T. Snyder issued the attached decision. The Respondent and the Intervenor Party to the Contract filed exceptions and supporting briefs and the General Counsel and the Charging Party filed answering briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions[3] and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Safety Carrier, Inc., Champlain, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

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[1] The name of the Charging Party has been changed to reflect the new official name of the International Union.

[2] The Respondent and the Intervenor Party to the Contract have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[3] *Arrow Uniform Rental*, 300 NLRB 246 (1990); and *NLRB v. Coca Cola Bottling Co.*, 936 F.2d 122 (2d Cir. 1991), enfg. 299 NLRB 989 (1990), cited by the Respondent in support of its contention that employees at the Champlain, New York terminal constitute an accretion to the existing unit, are inapposite. In *Arrow Uniform Rental* the Board dismissed decertification petitions seeking elections in single location bargaining units because of the parties' 8-year history of lawful bargaining on a multilocation basis. *NLRB v. Coca Cola Bottling Co.*, like *Arrow Uniform Rental*, also did not raise an accretion issue. In that case, the Board and the court found that an employer's expansion of its warehouse operation was a mere spinoff of preexisting unit work to a nearby facility.

Robert A. Ellison, Esq., for the General Counsel.
C. John Holmquist, Esq., of Birmingham, Michigan, for the Respondent.
James F. Wallington, Esq., of Washington, D.C., for the Charging Party.
Patricia McConnell, Esq. (Vladeck, Waldman, Elias & Englehard, Esqs.), of New York, New York, for the Intervenor.

DECISION

STATEMENT OF THE CASE

ROBERT T. SNYDER, Administrative Law Judge. This case was heard by me on July 31 and August 1, 1990, in Plattsburgh, New York. The complaint alleges that Safety Carrier, Inc. (Safety Carrier or Respondent) rendered unlawful assistance to the International Association of Machinists and Aerospace Workers, Local 1015, AFL–CIO (Machinists or IAM) in violation of Section 8(a)(1) and (2) of the Act, by soliciting employees to sign IAM authorization cards, granting recognition to the IAM, and extending the terms of a preexisting collective-bargaining agreement to a unit of employees employed at a newly commenced operation, including the deduction of dues from employees' earnings and their remission to the IAM. Respondent denied that it committed any unfair labor practices.

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. General Counsel, Respondent, and the Charging Union, Teamsters, Chauffeurs and Helpers Union No. 648, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO (the Teamsters) each filed posthearing briefs, as did the Machinists who entered an appearance and participated in the hearing as intervenor. Each of these briefs has been carefully considered. On the entire record in the case, including my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT

I. JURISDICTION AND LABOR ORGANIZATION STATUS

Respondent, a Texas corporation, with its principal office and place of business in the city of Garland, State of Texas, and various other places of business in Texas and other States of the United States, including a place of business located at the 11-87 Truck Plaza, Route 1, in the town of Champlain and State of New York (the Champlain facility), has at all times material, been engaged in the motor transportation of automobiles and general commodities as a common carrier. Annually, in the course and conduct of its business operations, Respondent derives gross revenues in excess of $50,000 for the transportation of freight and commodities from the State of New York directly to points outside the State of New York. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The Respondent admits, and I also find, that the Machinists and the Charging Union are each a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Growth of Respondent's Organization, Opening of the Champlain Terminal, and Relationship with the Machinists*

Respondent commenced operations in the interstate transportation of new automobiles in April 1986 from a location in Dallas, Texas. As a specialized automobile carrier, it transports automobiles for both domestic manufacturers and importers to retail dealers in various locations on the North American continent. A very small percentage (less than 1 percent) of its business involves hauling leased cars to auto rental companies. In 1986, it employed four drivers, two were domiciled in Dallas, and two were in Kansas City, Missouri.

As Respondent's operations grew, drivers were added in Dallas and a separate location in Houston, Texas. By early 1988, Respondent was employing 12 to 14 drivers domiciled in either Dallas or Houston. At the time of the hearing in midsummer 1990, Respondent had locations in Dallas, Houston, and Waco, Texas, with backhaul facilities[1] out of locations in Normal, Illinois, Flat Rock, Michigan, Lafayette, Indiana, and Los Angeles, California. Additional terminal facilities had also been established in Champlain, New York, Bromont, Canada, and Atlanta, Georgia. The last facilities to commence operations were those in Champlain and Bromont, Canada, in mid-October 1989, and in Atlanta, Georgia, in mid-April 1990. The Champlain facility is a terminal facility where drivers are domiciled and from which they are dispatched with their rigs to Bromont, Canada, to load Hyundai automobiles at a Hyundai plant located there for delivery to dealers. Respondent employs a terminal manager at Champlain and a supervisor at Bromont who inspects the automobiles, supervises the loading of equipment, and arranges their release from the Hyundai corporation.

Effective March 22, 1988,[2] prior to the establishment of the Champlain, Bromont, and Atlanta facilities, Respondent entered into a collective-bargaining agreement with the Machinists for a term of 3 years, pursuant to which in article III,A, Respondent recognized the Machinists as exclusive collective-bargaining agent ''for all employees of the Employer in the Dallas/Fort Worth, Texas, Kansas City, Kansas, Los Angeles, California and any other facility in the continental United States.'' ''Employee'' was defined in the agreement as any regular, full-time person employed in the job classifications of driver-robotic operator, driver, yard employee, rail loader/unloader, or any other person employed in any other job classification with the exception of managerial, supervisory, clerical and security personnel. In article III,C, the parties provided that ''when a majority of the eligible employees in any appropriate bargaining unit performing work for the Employer, executed a card authorizing the Union to represent them as their collective-bargaining agent at their terminal location, then, such employees shall automatically be covered by this agreement.'' Yet, article III,D, also provided that ''the provisions of the Agreement shall be applied without evidence of Union representation of the employees involved in all subsequent additions to and extensions of current operations which adjoin and are utilized as a part of such current operations, newly established terminals, and consolidations of terminals utilized as part of such current operations.''

Under article III,E, the term of 3 years would be automatically renewed for consecutive 1-year terms unless either party notified the other not less than 90 days prior to expiration of its intention to renegotiate. Neither party was obligated to renegotiate any provision during the 3-year term except as provided therein. A review of the agreement in evidence fails to reveal any provision otherwise requiring renegotiation during the existing term.

Under article XVI, employees in any existing facility may transfer to a new branch, terminal, division, or operation, retaining the unqualified right to return to their old facility for a period of 30 days following the transfer. The transferred employee retains his existing seniority. An addendum ''A'' to the agreement covered pay scales, including one-way mileage rates, in eight classifications for each year and addendum B provided for employer contributions to Union Pension Plan.

At the beginning of October 1989, just prior to the opening of the Champlain and Bromont locations, Respondent President and Chief Executive Officer Curtis Mickan noted that Safety Carrier employed roughly 35 employees, 25 of whom were domiciled in Texas. He later corrected this response to state flatly that all drivers were domiciled only in Dallas and Houston, Texas, prior to the Champlain facility opening.

Around June 1989, Respondent received a contract from Hyundai to provide service from the Bromont plant to the eastern section of the United States and to the Chicago area. Respondent's president Mickan employed a Commodore Hall as a consultant and admitted agent to interview and hire drivers to handle the business generated by the Hyundai contract.

According to Mickan, drivers were interviewed and then selected based on Safety's hiring policy. Prior to the opening of the terminal facility at Champlain, those drivers selected for hire were then sent for training to Scranton, Pennsylvania, for a period of 3 weeks, using Respondent's equipment sent up from Dallas and the facilities of a trailer manufacturer located in Scranton. This hiring process ran for roughly a 60-day period starting in late August until operations commenced with the handling of Hyundai automobiles in mid to late October 1989, although a test or marketing run of new autos took place in September. By October, Mickan asserted that new hires had completed their 60-day probationary period under the collective-bargaining agreement.

In soliciting applicants, Respondent placed help wanted advertisements in local newspapers in the greater Champlain and Northeast New York region.

By October 25, 1989, Respondent had nine drivers working out of Champlain. A seniority roster of that date shows that the drivers listed were first dispatched between October 11 and 25. The initial seniority roster drawn up by Respondent for the Champlain Automotive Division dated October 25, 1989, lists in order of seniority, Robert Lashway, Glenn

[1] As described on the record, a backhaul facility is a location where a north bound driver, out of Dallas or Houston, who has completed a delivery of new automobiles in the North, Midwest, or West will be assigned on his return trip to reload his rig with other automobiles for delivery to dealers located on the way back to his domicile and Respondent facilities in the south in either Texas or Georgia.

[2] Although not executed until a year later, on March 22, 1989, in an updated version.

Monto, Bradford Forkey, Joseph Whitbeck, Lee Delisle, William McCall, Emory Johnson, David Demastrie, and Paul Henderson. A Champlain employee roster as of November 2, 1989, lists seven drivers, and a March 9, 1990 roster lists eight drivers. By July 1990, the Champlain seniority roster had grown to 17 employees. Although Mickan insisted that two drivers from Dallas, Gordon Morris and Al Sisco, had worked out of Champlain as transfers under the bargaining agreement in the fall of 1989, and had even stayed 6 or 7 weeks, beyond the 30-day period during which they exercised their rights to return to Dallas, neither of them ever appeared on the Champlain seniority roster, apparently because their transfers never became permanent.

According to Mickan, when Respondent commenced operations at Champlain in October 1989, it automatically applied the terms of the 1988 Machinists Agreement and March 1989 addendum to the drivers newly hired to service that operation. In making that determination, as he had in applying its terms to past expansions, with the approval of the IAM, Mickan relied on the language of the agreement with the Machinists which, in his mind, applied to all of Respondent's locations in North America. He also had conversation regarding opening of the Champlain operation with the Machinists business agent in Dallas. Among other things, Mickan informed the IAM that the Company would be bidding driving positions for anyone who wanted to transfer to Champlain.

Mickan entered into negotiations in or about March 1990 with a national IAM negotiator out of Washington, D.C., and on behalf of Respondent, signed a new agreement with the Machinists, even though the existing agreement had another year to run. Mickan testified he did this because the Machinists wanted to provide different work rules and economic terms for different company locations in greater detail, to take into account local factors such as congestion and toll roads, although there already existed addendums to the national contract covering such factors as wages and work rules for each terminal.

The new collective-bargaining agreement between Safety Carrier and the Machinists was made effective for the period March 16, 1990, to September 30, 1993. It appears to have been dated and signed on March 17, 1990. Article I, section 1, provides, in pertinent part, that ''The Employer encompasses the current and future terminal operations of the Company . . . .'' Section 22 defines ''Local Unions''[3] as ''consisting of any local union which has or may become a party to this Agreement at or after the date of its execution. That includes unions whose members are employees of current and/or future operations of the Company.'' In article II entitled ''Union Security and Recognition,'' with clauses having few counterparts to the earlier 1988 agreement, the parties, in section I, in pertinent part, provide for recognition by the Company of the ''Local Unions'' of all employees in the classification of work covered by the agreement and local supplemental agreements utilized by the Company in the transportation of automobiles and make the agreement applicable to all present and subsequent open or acquired operations or terminals of the Company.

In article II, section 2, the parties agree that ''The employers, local unions and employer covered under this Agreement and various Local Supplemental Agreements thereto shall constitute one bargaining unit.'' Article II, section 2,A, in pertinent part, for the first time establishes a union shop, requiring IAM membership on and after the 31st day following the effective date of the subsection or agreement, whichever is later, notice to the IAM about employees within 7 days of hire, and termination of an employee 72 hours after company receipt of notice of noncompliance from the IAM.

Both the new (1990) and old (1988) agreements contained checkoff provisions authorizing checkoff of union dues and assessments from the wages of covered employees on a duly executed payroll deduction authorization.

The new agreement contains a number of supplements. Addendum A provides for work rules and regulations. Addendum B incorporates provision for employer contributions to IAM National Individual Account Plan of the Union Pension Fund.

At the same time as they negotiated the new agreement, the parties incorporated a supplement B, Local supplemental agreement for Champlain, New York, providing, in pertinent part, for wages to be increased on April 23 (or May 23) 1990, through 1991 in each of four categories, including running mileage pay, hourly rate for breakdowns, loading rates per unit, and unloading split deliveries. The earlier agreement contained only one-way mile rates for drivers. The new supplement also provided in writing for the first time for backhaul pay, with the rate remaining constant over the life of the agreement, holiday pay, funeral pay, vacation schedule, pension, dental benefits, lodging on a required layover, learner's pay, and incentive pay for claim and accident-free deliveries.

A final page of the document appears to be a modification of the vacation benefit, increasing such leave in accordance with a revised schedule and containing a handwritten note advising that employees would receive 2-percent compensation for each week of vacation pay, based on previous years' earnings.

General Counsel produced and offered in evidence a separate one-page supplement B covering the Champlain terminal signed by Respondent and the Machinists on March 17, 1990—more than a month before the signing on April 23 of the more than three-page supplement B above described. The earlier supplement leaves out the hourly rate, the .02-cent incentive pay and all other fringe benefits described in the later one, and also contains a lower loading rate than the April 23 supplement B.

Pursuant to the dues-checkoff provision, IAM dues were deducted from employees' pay, according to Mickan, commencing in March 1990.

When questioned by General Counsel about the circumstances surrounding the execution of IAM authorization cards by Respondent drivers working out of Champlain, Mickan professed ignorance of any involvement by company supervisors in card solicitation. He did acknowledge, however, that he visited Champlain the week of October 16, 1989, and brought with him Machinists union cards which he gave to Ken Cook, the terminal manager, and admitted supervisor and agent from October 1989 to January 19, 1990, and hired that week, with instructions to hold them and give them to the duly appointed job steward for distribution based on the direction of the Machinists representative.

[3] In the title page and preface to the agreement, the parties are listed as Safety Carrier and Locals 1015.

Mickan recently learned that Cook did not comply with these instructions but distributed the cards himself. By that time Cook had left Respondent's employ and been replaced by Lorie Gray, admitted supervisor and agent. Gray as terminal manager, reports to Greg Artkop, director of operations in Dallas.

Another admitted supervisor and agent employed in the Champlain terminal operation is Vianney Dumaline, marketing representative who handles the relationship with the Hyundai Corporation at Bromont. Michel Ducharne is loading supervisor in Bromont.

Mickan noted that each Respondent facility employed a terminal manager who is responsible for the day-to-day supervision of the drivers and loaders at those locations. In addition to the Champlain supplement, Safety Carrier negotiated two other supplements for other terminals, each reflecting differing dispatch arrangements, economic factors, and factors relating to geographic location, depending on whether the terminal is a port facility, inland terminal, or a plant site (as with Champlain). The work of the drivers at all locations is identical.

During his week in Champlain, in mid-October 1989, Mickan told the original complement of drivers at a meeting with them that all of Respondent's facilities were covered by the Machinists contract and that this was a North American contract, and, therefore, that in all likelihood, they would be covered by the Machinists agreement, as were all of their other locations.

In later questioning by Teamsters counsel, Mickan acknowledged that at the time Respondent extended recognition to the Machinists, on the hire date of drivers in October 1989, and the opening of the facility in Champlain, he saw no evidence that the employees had ever selected the Machinists as their collective-bargaining representative. To be sure, in order for the Machinists to be ''officially recognized'' the drivers would have to sign union cards which they did some time after he, Mickan, had left the terminal. Mickan insisted that Champlain was an extension of the Dallas operation, and union recognition was granted the same way it had been extended to the Houston facility when it had earlier opened between 1986 and 1988.

Mickan also acknowledged that so far as he was aware, no Machinists representative ever appeared at Champlain until after the complaint issued in this case, on May 7, 1990.

Mickan also agreed that the pay per mile for Champlain drivers from the inception of the application of the old agreement to them in 1989 into 1990 had been and was still 10 cents per mile greater then that paid to the Dallas/Houston drivers. Under the old agreement Respondent was applying to Champlain the terms of supplement B, even before its physical incorporation into the new agreement, which provides a rate of 31 cents per mile as its initial rate. Dallas drivers even under the 1990 agreement were still receiving 21 cents per mile (for trips of 80 miles and beyond) as provided in the 1988/1989 agreement. In each case, a .02-cent incentive was added. All other benefits described in supplement B had also been provided the Champlain drivers and yard men since their initial hire in October 1989.

Mickan had recommended to the IAM representative in Dallas several weeks before he visited Champlain on October 16, 1989, that because of a number of economic factors a higher rate should be provided the Champlain employers and the IAM agreed. These negotiations took place before any Champlain drivers were hired. Even prior to that time, Mickan had discussed with the IAM representative, Respondent's planned expansion into the Northeast. When asked if he would have a problem representing the people up in that area, the representative had said no. Mickan had factored in a 31=cent mileage rate in his bid to Hyundai and after the award of the transportation contract to Safety Carrier he had presented his ideas on a Champlain supplement to the Machinists. The Machinists voiced no objection so long as the rates proposed were no less than those contained in the National agreement.

B. *The Teamsters Interest in the Champlain Facility, the Facts and Circumstances Relating to Employee Execution of Machinists Authorization Cards, and the Relationship Between Champlain and other Respondent Operations*

In a certified letter to Respondent dated April 11, 1990, and received by April 16, Kenneth Ramsey, president and business representative of the Teamsters, claimed to represent a majority of the Champlain drivers (described as truck-away drivers), demanded recognition and offered a card check by an NLRB representative. This demand was shortly followed by a petition for certification of representative filed April 16, 1990, in Case 3–RC–9571 seeking an election among the Champlain drivers (described as car haulers). The petition is currently blocked by the instant unfair labor practice proceeding.

Various employee witnesses called by General Counsel testified about the circumstances surrounding their hire and their execution of authorization cards for the machinists.

Casey Van Operloo, responded to a Glens Falls, New York newspaper ad and was interviewed in Plattsburgh, New York, by Commodore Hall and another man. Hall described himself as consultant/trainer. He asked if there was any union affiliation. Hall responded that it was a Machinists union that would be representing you. Van Operloo asked if the Teamsters were involved at all. Hall did not know and the matter was dropped.

Two to three weeks later, Van Operloo was contacted to report to Scranton, Pennsylvania, for training. Four other drivers, among them Brad Forkey, Glen Monto, and Bob Lashway, and Van Operloo himself spent 5 days together training in Scranton during October 1989. Hall conducted the training. During this period, Van Operloo and the others named who had previously worked under Teamsters contracts[4] and had built up pension credits, kept asking Hall if the Teamsters were going to be involved. After the first inquiry, Hall telephoned Respondent's offices, presumably in Dallas, and brought back the response that the Company will not go Teamsters and there will never be any talk of Teamsters. On completion of the training, Van Operloo drove one of the trucks used in the training from Scranton to Champlain.

On the last day of training, Hall passed out Machinists membership cards to the five men, saying they had to sign it to be a member. Hall told them if they wanted to be a part of the union and get the union benefits, they had to sign it.

[4] Van Operloo had become a member of the Teamsters while employed by another hauler.

Van Operloo was shortly thereafter recalled to his old job and, accordingly, never went on Safety Carrier's payroll.

On cross-examination, Van Operloo was asked directly for the first time if he had signed the Machinists card and replied that he had. He then repeated that he and the others had been asked to sign by Hall. But now, Van Operloo expressed some reservation about signing the card, recalling that they had been asked to sign so many papers during their stay in Scranton, and then agreed it was possible he had not. His affidavit states ''I quit before I had to sign anything for the machinists.'' Hall was not called as a witness by Respondent to refute employee testimony. I credit Van Operloo that he and the others were asked to sign by Hall with the accompanying statements made by Hall, but that he probably did not sign then or later, particularly given his Teamsters adherence and his never having gone to work for Safety Carrier. Respondent's attempt to impeach Van Operloo's testimony through the interchanges described was ineffective, as was the attempt to show bias because Van Operloo was working at the time of the hearing for a Respondent competitor which received Honda shipments for delivery at Bromont.

Glen Monto was also interviewed by Hall at Holiday Inn at Plattsburgh after responding to a Plattsburgh newspaper ad. Monto recalled asking if a union was involved and receiving only a vague response. While in Scranton for training, Hall and the other Respondent trainer continued to be vague about the union involved, the health program and other benefits. Monto also drove a Safety Carrier truck back to Champlain. I, do not find Monto's response to be inconsistent with Van Operloo's attributing to Hall the statement that the Company, in effect, would not deal with the Teamsters or even that Hall distributed Machinists cards at Scranton. Monto's recollection was hazy, but he did recall that ''there was a union.'' (Tr. 101.) I conclude the union mentioned was not the Teamsters. Indeed, during cross-examination, Monto referred to company representatives discussing the ''Aerospace Workers,'' i.e., the Machinists and also that they were going to call Garland, Texas, and get back to them, both statements consistent with Van Operloo's testimony. Monto was not asked and so did not testify about card solicitation by Hall on the last training day.

Monto started working for Respondent making runs out of Bromont. Upon returning to Champlain from his first trip, Terminal Manager Cook showed him a two- or three-page agreement with the Machinists containing the employee pay scales, including the 31-cent-per-mile pay, and loading pay of $20 for up to nine vehicles, and $.25 per unit over nine. This latter item differed from the hourly rate of $8.50 Monto had been told during the training session the drivers would receive for loading.

Cook also presented Monto and the other drivers with membership and dues-checkoff authorizations for the Machinists. He told them this was the agreement you had with the Company and you have to sign the cards so he could forward them to Texas. Monto quit after about a week and did not sign the cards. Monto's current job driving for Anchor Motor Freight under contract with the Teamsters provides him with a substantially greater pay scale (mileage and loading rates) and benefits than those provided drivers under the Machinists local Champlain supplement B to the national agreement.

Before quitting, Monto never saw either of the two Dallas area drivers who purportedly worked out of Champlain for 5 to 6 weeks in the fall of 1989.

Bradford Forkey, another driver, like Monto, trained at Scranton and hired on the original seniority roster at Champlain, but still working for Safety Carrier at the time of the hearing, corroborated Van Operloo, in attributing to Hall the statement that it would be a union job and they would be in the Machinists union. Forkey corroborated Monto in describing Cook's distribution of Machinists cards to the initial complement of drivers in October, accompanied by the statement that he had these cards for us to fill out from the Union, and we were to fill them out and then turn them back in to him. Forkey signed and returned the cards.

Forkey also testified that in the latter part of May 1990, he filled out a second Machinists card when the successor Terminal Manager Lorie Gray told him the Company had lost the other ones and he had to fill it out. In truth, the first cards had not been lost at all. Forkey's first set of cards, received in evidence, show that on October 20, 1989, he signed a membership and bargaining authorization card on behalf of the IAM, and a dues-checkoff and authorizing deduction of dues from his pay for remission to the IAM but leaving blank the name of the Company. On June 7, 1990, Forbey signed another membership and bargaining authorization card on behalf of Machinists Local ''447'' out of Lyndhurst, New Jersey.

Forkey recalled an occasion in or about March 1990, when Vianney Dumaline had called the Champlain terminal from Bromont to inform the drivers that Machinists representatives would be coming up for a meeting with them a few days hence. The men gathered at the scheduled time but no Machinists officials appeared. Vianney called after 2 hours of waiting to inform them. This waiting delayed their dispatch to Bromont for loading their rigs for a considerable time that day.

Forkey later learned that a meeting of drivers with Machinists representatives did ultimately take place, but he was not present. Forkey has not met or had any dealings with Machinists representatives. He believes IAM dues was deducted from his pay starting in April.

Forkey testified that in December 1989, two drivers from Dallas carried loads between Bromont and Naperville, Illinois, but they did not come down to the Champlain terminal. Under Respondent's cross-examination, Forkey acknowledged that more recently, in the month or so preceding the hearing, drivers from Dallas had frequently come up to Champlain to get dispatch loads out of Bromont, and some Dallas drivers had done so from time to time since January. However, according to Forkey, none of the Champlain drivers had ever been assigned to perform work out of either the Atlanta, Texas, or any other Respondent terminals, although they had made a few backhauls out of such terminals after making Hyundai deliveries in the South.

Joseph Whitbeck, another witness called by General Counsel, whose employment date on the original roster at Champlain was October 21, 1989, worked until mid-December, quit, and then returned from mid-February to late May 1990. While he did not recall any mention of the Machinists in his employment interview, he was present with other drivers hired at about the same time when they were addressed by Respondent officials on or about October 25, 1989. The other

drivers were Lee Delisle, Paul Henderson, Dave Demastrie, Emory Johnson, and Bill McCall. Among the officials present were Hall, Cook, Dumaline, Michel Ducharme, and Mickan. No Machinists representatives were present.

At one point Delisle asked Mickan something about unions, about their pensions, that he'd already had invested in the Teamsters. Mickan responded that Safety Carrier already had a contract with the Machinists and that's what we were to be. Whitbeck is credited over Mickan's general denial that he ever solicited employees to join the Machinists. The statement attributed to Mickan is consistent with his position that the Machinists contract was automatically extended to include Champlain when that facility commenced operations.

At the gathering the men were also handed Machinists union cards to sign and told to fill them out, probably by Cook. Whitbeck is credited that he signed and returned the designation and dues-checkoff cards, along with insurance and dental forms, although Respondent failed to produce them at the hearing.

Whitbeck described in greater detail the facts relating to the abortive union meeting scheduled for April 1990. Manager Gray had informed the men to be present the next day for a meeting at 10 a.m. in Champlain. That evening, after loading their rigs at Bromont, the men stayed overnight at a motel in Plattsburgh, New York, at company expense. The union men were supposed to arrive at 7:30 or 8 a.m. the next day but never appeared. After waiting until 10 a.m., the men left with their rigs to make their deliveries.

After returning to work for Respondent in February 1990, Gray gave him another application card to fill out for the Machinists. This time, he told her he would not sign it. Whitbeck and other drivers had already made contact with the Teamsters. In spite of Whitbeck's refusal to sign another card, dues continued to be deducted from his pay until he left. Whitbeck left Respondent's employ again in May 1990. He still had not seen any Machinists representative at the Champlain facility.

Thomas Gomez was interviewed for a job as driver at Champlain in late September 1989, started working on December 11, and was still employed at the hearing. Hall told him that the Machinists union represented the men and that it was a good Union. Gomez was also trained in Scranton with three others just before taking out his first load. The others also started driving out of Champlain. While at Scranton, Hall passed out Machinists membership and dues-checkoff cards that they all signed. Starting in May 1990, Machinists dues of $28 a month was deducted from his pay.

Gomez recalled meeting Machinists representatives for the first time in Champlain at the company trailer at the truckstop or terminal facility. The meeting took place on Tuesday, May 22. He was informed ahead of time by Michel Ducharme, the loading supervisor at Bromont, that there would be a meeting, without indicating it was to be with the union. It lasted for 3 hours in the morning and Gomez was paid for the time. Present were Andrew Kenopensky and Ed Bingham for the Machinists and the seven or eight drivers. Managers Gray and Dumaline were in the next room separated by a divider. The Machinists representatives sought to explain their failure to earlier appear in Champlain by stating they were busy in Dallas and Atlanta trying to get those facilities organized. They told the men they had a contract that we were going to be following. There weren't enough copies available so Gomez received one from Manager Gray. It was the new 1990 to 1993 agreement and contained a local wage and benefit supplement which listed the Atlanta, Georgia location, not the Champlain facility. To date, he never received or learned of any change in the contract supplement.

A week after the meeting, Gray distributed new Machinists cards to the men and told them to fill them out. When the men appeared to hesitate, she added, ''Well, if you don't fill them out, you're not going to get your benefits for your union.'' When Gomez told Gray he had already done so, she just repeated what she had said, these needed to be completed. Gomez' membership and designation card is dated May 30, 1990.

Emory Johnson, another employee on the original Champlain seniority roster, testified that at his interview in Albany about 2 weeks before starting on October 25, 1989, Hall told him that the Machinists Union was representing the employees. At a 2-day training session in Plattsburgh, preceding their initial dispatches, Hall told the drivers that they had to fill out Machinists cards along with the other forms which were distributed, that it was part of their employment.

About 2 or 3 weeks later, Manager Cook passed out Machinists cards again, telling the men to fill them out, that they had misplaced or lost the first ones. There was a third occasion probably in April 1990, when the successor manager, Lorie Gray, told the employees they had to fill out new cards again because they couldn't find the original ones. The record contains Johnson's original membership application and bargaining designation card and dues-checkoff authorization for the IAM, both dated October 25, 1989, and a later membership and bargaining designation card for Machinists Local 447 dated June 5, 1990.

Johnson was told by Lorie Gray that Vianney Dumaline had called the meeting scheduled for April 1990, when the two IAM representatives failed to appear. As to the union meeting that was actually held on May 23, 1990, Johnson and the other drivers were told to attend by Gray and Dumaline. After introducing the Machinists representatives, Dumaline left and went into the backroom. Johnson confirmed that the contract passed out on that date was the 1990 national agreement containing the Atlanta, Georgia supplement. When Johnson and others asked why they had attached a schedule which did not concern them, one of the union agents said a local supplement would be prepared naming Champlain and containing some changes, among them one providing for daily dispatch by seniority and another on the vacation schedule, as the area drivers had apparently requested.

By the following week, the drivers received a Champlain supplement B which did contain the increased vacation benefit, including the 2-percent compensation earlier described.

Johnson's union dues have been deducted from his pay since the end of March 1990.

Johnson was elected the Machinists steward by the Champlain drivers after the May 23 union meeting at which the representatives indicated they had to have a steward.

William McCall was another driver on the original Champlain roster. He recalled that either at his job interview by Commodore Hall or during his training in Champlain, he was told that the Machinists Union was the one that represented the drivers. He also testified that Mickan came up afterwards

and told the assembled employees that the Company was represented by the Machinists and that they never had a grievance filed. It was also McCall's recollection that he had twice signed union cards for the Machinists, once in the fall of 1989, either during his orientation or when presented the cards by Manager Cook, and later at the meeting addressed by Machinists representatives. The first cards, union designation and dues-checkoff authorizations, he signed on November 29, 1989, at the request and in the presence of Manager Cook, and the second membership designation card for Machinists Local 447 is dated May 30, 1990, a week after the meeting. The other drivers at the meeting were also given similar cards.

McCall believed union dues deductions from his pay commenced sometime after January 1990.

Gerald Derusha likewise was employed on the first Champlain seniority roster in October 1989. At an orientation session during training, Hall gave Derusha and these other drivers sets of Machinists cards to sign and told them to fill them out. No indication was given by Hall that their signing was a voluntary act. Hall, when asked, was not sure about the amount of union dues.

Derusha signed another card in May about a week after the Machinists agents appeared. When Lorie Gray gave it to him she said they had lost the other cards and this one needed to be filled out. Derusha's first cards for the IAM are dated November 24, 1989, his later card for IAM Local 447 is dated May 31, 1990. Derusha delayed signing the second card some days because although told by Gray to sign it, he didn't like the wording which stated he wanted the Machinists to represent him.

David Demastrie, another original employee on the Champlain seniority roster of October 25, 1989, was told by Hall at his interview that the Union at Respondent was the Machinists and Aerospace Union. Demastrie expressed concern about the benefits to be provided and Hall told him that he would receive 80-percent coverage for dental and health care and something about a pension plan. He was hired and within a few days went to Champlain for an orientation day before being dispatched out.

Four to five weeks later, Manager Cook gave him and other drivers Machinists designations and dues-checkoff cards telling them to fill them out. A set of Demastrie's IAM cards in evidence are dated October 25, the day he had orientation and started driving for Respondent. Demastrie swore he also received another card later from Manager Cook. Her later designation card for IAM Local 447 is dated May 30, 1990, a week after the meeting with the Machinists. It was given to him by Manager Gray, who told him this is what they gave me to hand out to you guys to fill out.

Demastrie noted that present at his orientation when he was given the first set of Machinists cards to complete were Cook, Dumaline, Ducharme, Mickan, and a vice president of safety named Paul. Demastrie asked Mickan at the orientation gathering about the kind of holidays they had, and how much was the initiation fee when Mickan had discussed that Union as their representative. Mickan responded that he had asked somebody else about it and was told there was no initiation fee.

Paul Henderson, Robert Lashway, and Lee Delisle were the only ones of the nine original Champlain roster drivers not to testify. Delisle and Henderson's Machinists cards in evidence contain dates of November 24 and 28, 1989, respectively, consistent with those of other original drivers who testified they had been given them by Manager Cook who told them that they had to fill them out. Lashway along with Glen Monto, another of the nine who testified, quit after a week like Monto, and did not sign Machinists cards. Neither of them appear on the November 2, 1989 seniority roster, although all other seven original hires do.

Ronald Hicks testified that he had been hired by Respondent in Champlain and hauled new cars as a driver from about March 27 until the end of May 1990. The day he was called for his physical he was presented a union card by Manager Gray. She told him, at his inquiry, that there was no initiation fee and they were not even taking out union dues at the time.

Kenneth Cook also testified as a General Counsel witness. As Champlain terminal manager from October 17, 1989, to January 16, 1990, when he left voluntarily after being hospitalized, he prepared the payroll, checked drivers' logs, paid bills, dispatched the drivers and handled rig breakdowns and supervised maintenance work on the equipment. He reported to Vianney Dumaline, marketing representative and described as eastern regional manager. During his tenure, Dumaline visited the facility three or four times.

Cook was interviewed for the job by Dumaline on the day he was hired, after telling consultant Hall earlier that his interest was in load making or dispatching rather than driving. Cook confirmed that two drivers came up from Texas for a time to haul automobiles from Bromont, Canada, to Naperville, Illinois.

According to Cook, the two drivers out of Texas, Al Sisco and a second, were initially dispatched from the Champlain terminal by a fax received from Bromont. Thereafter on all their runs between Bromont, Canada, and Naperville, Illinois, Cook never saw them again until they went back to Texas sometime before Christmas 1989. Cook believed they entered the United States at Port Huron, Michigan, on their way to Naperville. Cook forwarded their paychecks to them by mail to their home addresses, presumably in Texas. Their names never appeared on Champlain seniority lists but were kept on a separate list covering exclusively drivers on the Naperville run which he maintained. On one occasion, a driver from another trucking company hauled out of the Champlain terminal under an agreement with Safety Carrier. Other than those instances, no other drivers, other than those on the Champlain seniority roster performed services for Respondent from the Champlain facility. Furthermore, none of the Champlain drivers performed services out of any other Respondent terminal other than some backhauls out of a railroad in South Bend, Indiana, with loads destined for Port Newark, New Jersey.

Cook was instructed by Dumaline when the first dispatchers started in October 1989, that he was to give the drivers the Machinists cards to be signed and returned to him and he would hand them over to Dumaline. Cook followed these instructions, had the cards signed and returned them to Dumaline. The employees who signed were Brad Forkey, Bob Lashway, and Glenn Monto. Cook told them they had to be filled out before we could dispatch, that he had to turn them in. It will be recalled that Forkey's cards are dated October 20, 1989. Respondent failed to locate or produce cards for Lashway and Monto. Monto testified he quit a week later

before signing. Lashway and Monto started employment on October 11 and Forkey on October 13.

Cook described the hiring of a second group of drivers. These were hired between October 21 and 25, 1989. There were six, including Joseph Whitbeck, Lee Delisle, William McCall, Emory Johnson, David Demastrie, and Paul Henderson. Cook thought there were at least seven. During that week, Cook was present when Mickan addressed the men as part of their training.

The few days training at the Champlain facility was conducted by Commodore Hall and Chuck Tinker. Cook asked Hall if the union cards had already been signed and Hall said everything had been taken care of. Hall explained that in the packet of forms given to the new drivers were the Machinists cards.

Later, Cook was told by Dumaline that he had to give some of the drivers new union cards to resign because somehow or other they got misplaced. Cook had all the drivers who had started on the training program sign new cards, telling them they were to fill their cards out, sign them, and give them back to him so he could give them back through the proper channels. After getting them back, Cook put them in an envelope and personally gave them to Dumaline.

Later testimony by Cook disclosed that even before becoming hospitalized in January 1990, he had missed work from the end of October to the week of Thanksgiving because of illness.

In a letter dated February 1, 1990, from Mickan to Cook which Respondent introduced into evidence, Mickan informed Cook that as a consequence of the needs of the job during his most recent leave of absence, the Company could no longer hold his position open for an extended period of time and was obliged to seek a replacement. In the letter Mickan described the Champlain facility as a ''one person'' terminal and the manager as being responsible for dispatch, load makeup, and payroll for 10 drivers who operate out of it.

To the extent, Respondent relies on this letter as either establishing an inconsistency with Cook's characterization of his leaving the job as voluntary, or as a basis of establishing bias on Cook's part, warranting his impeachment, I reject either implication. Cook explained the circumstances of his leaving because he was hospitalized. He may have reasonably believed the separation to have been amicable, and therefore ''voluntary'' in that sense, although it is clear that he was removed from his job because of his continued illness, albeit with the promise of consideration for future employment. Neither Cook's mischaracterization of the nature of his separation nor the fact that it was involuntary warrants Cook's impeachment as a witness. His testimony was straight forward, credible and consistent with, and corroborative of, that of the employee witnesses with whom he had union related interchanges. The only other Respondent witness, Mickan, whose testimony is at odds with Cook's, regarding in particular whether Cook was instructed to hold the Machinists cards he provided for delivery to the job steward, has not been credited on this matter. Noteworthy is the fact that Vianney Dumaline, whom Cook claimed instructed him in his card solicitation, was not called as a Respondent witness to dispute the thrust of Cook's and the employee witnesses' testimony. Neither was Gray called by Respondent to contradict employee allegations regarding the nature of her solicitations of employees to sign so-called replacement Machinists cards nor was Hall called to contradict his alleged conduct in directing card signing and informing employees of the IAM's status as incumbent union.

As to the Respondent's checkoff of machinists dues from the pay of Champlain terminal employees, the parties stipulated that commencing with the pay period ending March 26, 1990, Respondent deducted $28 monthly machinists dues from the pay of Champlain terminal drivers. The employees then employed were Johnson, Derusha, Forkey, Whitbeck, Demastrie, Gomez, and McCall. No authorization covering the withholding of employee Whitbeck's dues were produced by Respondent. Dues remittances were made by Respondent in May and June to the Machinists on behalf of Forkey, McCall, Johnson, Demastrie, Derusha, Gomez, Hicks, and Wilfred Feliciano. There are no authorizations in evidence for Hicks or Feliciano. As established by the record, the dues-checkoff authorizations were obtained at the same time and with the same solicitation as were used to obtain the designation cards.

Respondent presented its defense through the testimony of President Curtis Mickan, who had previously testified as a witness called by General Counsel under Fed.R.Evid. 611(c).

Mickan listed the supervisory personnel in the Dallas home office as himself as president, Greg Artkop as director of operations, Bob Beatty as manager of personnel and safety, and Rick Whitmore, as southwest regional manager of accounting, domiciled in Houston. In seeking to staff the Champlain operation, Mickan solicited employees from the Dallas/Houston operation bidding the position of driver in accordance with the transfer procedure described in the 1988 National Agreement with the Machinists. See supra.

By notice dated October 10, 1989, and distributed to the two Texas terminals for posting on the appropriate bulletin boards, Mickan informed all automobile carrier division drivers—Dallas/Houston about the new operation in the Northeast corridor. He described the operation as transporting automobiles from the new Hyundai assembly plant in Bromont, Canada, to points in the United States, with the terminal in Champlain, New York, serving as the distribution area for nine States from New York down through the Virginias. In the notice Mickan also referred to the terminal operation in South Bend, Indiana, which will run a shuttle from Bromont, Canada, to Naperville, Illinois, 7 days a week.

In a last paragraph Mickan asked that anyone interested in permanently redomiciling to either of these operations, please see Greg Artkop or him by Friday, October 13, 1989. Mickan noted that all operations will utilize single line drivers and conventional style equipment.

Mickan believed that on October 22 or 23 drivers were domiciled or operating out of Dallas or Houston. Confirming Cook, Mickan recited that the two southern drivers who went to the new operation under the transfer provision containing a 30-day right to return were originally dispatched to Champlain for direction for their dispatch, reported to Bromont and thereafter ran trips between Bromont and Naperville, entering the United States at the Port of Huron, Michigan, just outside of Detroit. However, after 3 weeks, because the broker Hyundai used closed that port, the two drivers had to use the Port of Champlain for the remainder of their time in the North.

According to Mickan, since the opening of the Champlain facility in October 1989, as many as 11 Dallas/Houston drivers have worked on a weekly basis out of Champlain because of the sporadic and excess volume of automobiles out of the Bromont plant consigned to Respondent's area of operation. No Champlain drivers have worked at the Dallas facility.

The equipment used in Champlain on its opening in October 1989, and since, was identical to that utilized in Dallas. It included both 60- and 65-foot combination tractor-trailers, with the trailer specially built and containing a head rack to store automobiles.

In October 1989, the employees in both Champlain and Dallas received identical health insurance, dental insurance, and life insurance benefits.

The work of the drivers involved in inspecting, loading, transporting and unloading the 9 or 10 car loads was the same for both locations; only the manufacture and make of the automobiles differed, with Dallas/Houston delivering Subarus and Mitsubishis, among other makes, and Champlain handling Hyundais. Only one job classification was employed at both facilities—that of driver.

In terms of discipline of the drivers, the local terminal manager in either Dallas or Champlain determines whether discipline is called for in a particular case, and makes a recommendation and Mickan's office is notified. Neither location has ever had any layoffs. Mickan himself is responsible for labor relations, terminal wide.

As to the hiring of additional drivers in Champlain, Michel Ducharme, the loading supervisor stationed in Bromont, first receives information about new auto releases from the Hyundai factory. He in turn informs Terminal Manager Gray, who contacts Greg Artkop in Dallas who prepares a plan for Mickan's approval as to what equipment and from which locations it will be needed, which shippers they are going to have to handle, and how many drivers will be required and whether new drivers will be hired.

During his cross-examination by General Counsel, Mickan explained that of the 23 drivers in Texas in October 1989, 20 were in Dallas and 3 in Houston, and each facility had a separate terminal manager reporting directly to Artkop. Furthermore, Mickan himself handles all marketing responsibilities for Dallas/Houston and Vianney Dumaline has no marketing functions for those facilities. Previously, Mickan had been identified as marketing representative, and as Champlain Manager Cook's supervisor for that facility.

With respect to the use of Dallas drivers to handle excess Champlain loads, Mickan asserted that they always go through Champlain to get their dispatch, but continue to remain on the Texas seniority list while carrying loads out of Bromont. None of the Dallas/Houston drivers were ever permanently stationed in Champlain.

As far as the general range of delivery of the Texas drivers, Mickan reported that they deliver all the way from Los Angeles to as far north as the Dakotas, over to Michigan and down and over to the Southeast. The Champlain drivers deliver from Bromont into all the Eastern States as far south as Georgia.

Mickan acknowledged that there have been occasions when Respondent has been unable to handle excess flow out of Bromont with its own drivers. At those times, Respondent would advise Hyundai and they would tender that traffic to a competing carrier.

Although health and pension benefits are the same, Mickan noted Champlain drivers are paid 10 cents a mile more than the Dallas drivers and also receive 50 cents an hour more in the hourly rate when applicable. Since their wage rate is higher, the Champlain drivers receive a greater vacation benefit, based as it is on 2 percent of salary for each week's entitlement to vacation pay.

Each terminal has its own seniority list for its drivers, used to determine order of layoff and recall, although as noted earlier, no economic lay-off has taken place to date at any Respondent facility.

Mickan also testified that Safety Carrier is not the exclusive transporter of Hyundai vehicles out of Bromont. Hyundai has arrangements with two carriers allocated to the east coast distribution, one being Safety Carrier and the other being E. & L. Transport. On one occasion, when there was a severe overflow of new autos out of the Bromont plant, and E & L Transport could not handle it, Hyundai asked Respondent to find a carrier to trip lease with, i.e., to arrange a subcontract with another carrier to handle the excess load. When these events arose, at the very outset of its Champlain operation, in the fall of 1989, Safety Carrier had already assigned as many drivers as it could to handle the volume of deliveries out of Bromont under its own contract with Hyundai. Safety Carrier arranged for a small Northern carrier, known as KAT, or Kanosha Auto Transport, to handle the overflow and KAT had a master automobile transporter agreement with the Teamsters.

Mickan agreed that the two Texas drivers who bid for transfer to the Champlain operation did so after the initial complement of Champlain drivers had already bid for and been assigned to the east coast operation from Champlain south through the Virginias. While Mickan disputed at this point that Respondent recognized the Machinists before designation cards had been obtained from the Champlain drivers hired in October, this testimony conflicts with his earlier recital about automatically applying the 1988 Machinists Agreement on commencement of operations. Applying the bidding and transfer provision of the agreement to Dallas employees reinforces the earlier testimony. Mickan here again uses the phrase ''officially recognized'' to distinguish between two decisions, the first granting recognition and extending contract coverage, and the second apparently leading to execution of a local supplement agreement containing local wage terms, benefits and other conditions of employment. In any event, the degree to which the cards executed by Champlain drivers had been tainted by management solicitation has been previously spread on this record.

Mickan also acknowledged that along with Commodore Hall, another individual, Charles Tinker, was hired as a consultant to handle maintenance problems in the startup of the Champlain operation. Furthermore, Dumaline, as a Frenchman, was also hired specifically to handle the factory relationship with Hyundai for the Champlain facility, as was Ducharme, the loading supervisor stationed at Bromont.

Mickan further noted that while he had referred to a South Bend, Indiana terminal in his October 10, 1989 notice to Texas employees, none was ever opened, although the Bromont, Canada, to Naperville, Illinois run was established and was assigned by the Champlain manager to the two Dallas drivers for a period of up to 6 to 7 weeks. While Respondent had an office for some weeks in South Bend, no

terminal was ever established there.[5] That office closed when Port Huron closed in early November 1989.

Analysis and Conclusions

The first issue to be addressed is whether the establishment of the Champlain terminal constituted an accretion to the existing bargaining unit authorizing the already recognized Machinists to act as exclusive bargaining agent. Mickan in his testimony and Respondent and Intervenor in their briefs asserts this defense to the conduct in recognizing the Machinists and applying the terms of the 1988 National Agreement to the Champlain drivers. Both General Counsel and the Charging Union claim there was no accretion and that by recognizing the Machinists and by extending the terms of the agreement with the Machinists to the Champlain facility, Respondent interfered with the rights of the Champlain drivers to select a bargaining representative of their own choosing or, indeed, none at all, in a separate, appropriate bargaining unit.

The Board has defined an accretion as ''the addition of a relatively small group of employees to an existing unit where these additional employees share a sufficient community of interest with the unit employees and have no separate identity. The additional employees are then properly governed by the unit's choice of bargaining representatives.'' *Safeway Stores*, 256 NLRB 918, 924 (1981).

In determining whether an accretion exists, the Board follows a restrictive policy, recognizing that a finding of accretion forecloses the employees' basic right to select their bargaining representative. See, e.g., *Towne Ford Sales*, 270 NLRB 311 (1984). As the Board stated in *Melbet Jewelry Co.*, 180 NLRB 107, 110 (1969) [it] ''will not, under the guise of accretion, compel a group of employees, who may constitute a separate appropriate unit, to be included in an overall unit without allowing those employees the opportunity of expressing their preference in a secret ballot election.''

As part of this restrictive policy, where a new group of employees has come into existence during the term of a collective-bargaining agreement, only if they have such common interests with members of an existing bargaining unit that the new employees would, if present earlier, have been included in the unit or covered by the current contract, will the Board permit accretion in furtherance of the statutory objective of promoting labor relations stability. *Gould, Inc.*, 263 NLRB 445 (1982). Thus, in resolving this issue, one must engage in a balancing of countervailing principles, weighing the right of employees to select a bargaining agent against the statutory objective of maintaining established stable labor relations.

''In determining whether a new facility or operation is an accretion, the Board has given weight to a variety of factors including integration of operations, centralization of managerial and administrative control, geographic proximity, similarity of working conditions, skills and functions, common control of labor relations, collective-bargaining history, and interchange of employees.'' Id. at 445. Another important factor is whether the day-to-day supervision of employees is the same for the two groups of employees. *Towne Ford Sales*, supra at 311, 312; *Save-It Discount Foods*, 263 NLRB 689 (1982); *Weatherite Co.*, 261 NLRB 667 (1982). This last factor is particularly significant, because, as the Board has noted, the day-to-day problems and concerns among the employees at one location may not necessarily be shared by employees who are separately supervised at another location. *Renzette's Market*, 238 NLRB 174, 174 (1978).

Applying these principles and factors to the instant facts, I am convinced that the Champlain facility did not constitute an accretion to the existing unit and that by applying the contract to the Champlain drivers, Respondent violated the Act.

While President Mickan exercises central authority over policy and direction of the enterprise, nationwide, from the Respondent's headquarters in Texas, and Greg Artkop, as director of operations, from the same location apparently has an overall managerial function and along with Mickan visited the Champlain facility on at least one occasion, a number of facts regarding the establishment and functioning of the Champlain facility show the separate, autonomous nature of its operation. Thus, its work force was recruited, interviewed, trained and hired in the Northeast, and its equipment was serviced and prepared by consultants employed separately and specifically to aid in the startup of the facility. In the management of the facility, Champlain, like the other terminals, employs a separate terminal manager with responsibility for the day-to-day supervision of the drivers and loaders. Such supervision admittedly includes making the initial determination as to whether and what extent employee discipline is appropriate and recommending such action to Mickan's office. There is no record evidence that Mickan, Artkop, or anyone else at Respondent's headquarters in Texas performs any independent investigation as to discipline recommendations. In addition, the Champlain manager prepares the payroll, checks driver's logs, pays the bills, dispatches the drivers, handles rig breakdowns, and supervises maintenance work on the equipment. While some of these functions may have been performed by some of the other terminal managers in October 1989, when Champlain opened, Respondent did not adduce any evidence of it and from Mickan's description of Rick Whitmore's function as southwest regional manager of accounting domiciled in Houston, coupled with Mickan's failure to respond to Ken Cook's description of his own duties, the inference is reasonable that

[5] Charging Union's attempt to impeach Mickan's testimony through use of a document—a lease agreement—listing as of February 7, 1990, a South Bend location as one of Safety Carrier's terminals is ineffective because Mickan adequately explained that the location in question was not a Respondent terminal with employees, but was rather a broker's address and telephone used by Respondent to solicit backhaul business.

In finding Mickan's testimony not credible in certain areas, neither do I rely on an alleged discrepancy between Mickan's testimony that operations were expanding in 1989 and a sworn statement in an affidavit executed on February 7, 1990, for submission to the Interstate Commerce Commission (ICC) that serious service problems during early 1989 resulted almost overnight in a loss of 50 percent of the business. The affidavit shows that by April 1989, the ICC had approved an application of Respondent to permit System Corp. Transportation System to lease Safety Carrier's operating rights pending final disposition of Respondent's petition of exemption to permit a permanent transfer of control and operating rights to another corporation, Automotive Carrier Services Co., via a transfer of stock of Respondent's parent, Unimark Services, Inc. Not only did Jupiter continue Respondent's operations but it expanded them into the Northeast by opening the Champlain facility in October 1989.

Whitmore probably prepares the payroll and pays the bills for the Texas facilities. Thus, the Champlain manager also, probably because of the immense geographic distance of thousands of miles from the Texas headquarters and facilities, performs a greater range of managerial and administrative functions than his counterparts in the South. These factors all weigh against finding an accretion. *TRT Telecommunications Corp.*, 230 NLRB 139, 141 (1977); *Bowie Hall Trucking*, 290 NLRB 41 (1988).

Aside from Terminal Manager Cook, separate supervision at the Champlain facility included a Bromont dispatcher, Michel Ducharme, and marketing representatives/eastern regional manager, Vianney Dumaline, whose functions included, among other things, dealing directly with Hyundai management at Bromont and directing Manager Cook in the gathering and solicitation of Machinists designation and dues-checkoff cards. See *Rainey Security Agency*, 273 NLRB 269, 276 (1985); *Bowman Transportation*, 230 NLRB 935 (1977).

Besides the lack of geographic proximity of Champlain from the Texas terminal, the record is clear that there has been no regular interchange of employees between the Champlain and Texas facilities and with one exception, none in 1989. No Champlain drivers were ever dispatched out of Dallas, Houston, or Waco, or even Atlanta since its establishment as a terminal in April 1990. See *Safeway Stores*, 275 NLRB 944, 949 (1985). While two drivers domiciled in Texas spent 6 to 7 weeks in the fall of 1989 hauling Hyundais from Bromont, Canada, to Naperville, Illinois, they did not report to, nor were they dispatched from, Champlain except for their first trip. Even their paychecks were mailed to their Texas domiciles by the Champlain manager since they spent no subsequent time at the Champlain facility. While they operated from Bromont, the Champlain manager kept them on a seniority roster separate and apart from that of the Champlain drivers. Because of the absence of any permanent transfers or even temporary transfers beyond the two drivers discussed, as well as the circumstances of their use, any reliance Respondent places on the bidding procedure of the 1988 Machinists Agreement to show an integration of the Dallas with the Champlain operation is inadequate to support an accretion of the Champlain facility with the existing unit. See *Pilot Freight Carriers*, 208 NLRB 853, 858 fn. 15 (1974).

The Texas drivers, up to 11 in any given week since October 1989, who, according to Mickan, hauled out of the Champlain facility performed this work, again according to Mickan, solely because of the sporadic and excess volume generated under Respondent's agreement with Hyundai. Mickan's description of their work, leads unescapably to the conclusion that they were used to handle over flow in spite of Mickan's denial of that function. This limitation, coupled with the instances, disclosed of record, when Respondent ''trip leased'' and could not otherwise handle the overflow and referred the excess back to Hyundai, strengthens the conclusion that while Texas drivers have been dispatched out of the Champlain facility it has not been on a regular basis, and was rare, at best, in 1989. I am also influenced in making this conclusion by the credited testimony of Manager Cook that no Texas drivers, other than the two on 30-day revocable transfer assignment, performed services out of Champlain during his active tenure, in October and December 1989. Mickan's failure to corroborate the assignments of Texas drivers out of Champlain by trip records, invoices, logs, or other documents, also makes his assertions in this regard somewhat suspect, and in any event, they remain general, rather than specific in nature as required to support a finding of accretion, *Capitol Transit*, 289 NLRB 777, 784 (1988). Employee Bradford Forkey's acknowledgment that from time to time since January 1990 drivers came up from Dallas to get loads out of Bromont does note establish that such interchange took place on any basis at all in 1989. Finally, none of the Texas drivers dispatched out of Champlain, permanently transferred to that facility or went on its separate, seniority roster. That roster is separately maintained for Champlain and determines the order of lay off and recall in the event of a layoff, although none has occurred to date.

As to working conditions, skills and functions, the record establishes that all of the employees, those in the existing unit and in the Champlain facility, are drivers, perform the same functions, use the same equipment, and generally receive the same fringe benefits. Working conditions, including startup time, dispatching procedures, including dispatch by seniority, and the like are unique to Champlain, in accordance with the Champlain drivers' demands and Mickan's testimony acknowledging the successful Machinists demands in March 1990, for a new agreement containing separate supplements, including different work rules and economic terms for different terminals to take into account such local factors as congestion, toll roads and whether the terminal is located at a port, inland, or at a factory site for dispatch as is the case in Champlain/Bromont.

The record makes clear that the wage terms of the Champlain complement have, since the inception of its operations, exceeded those of the Texas drivers by at least 10 cents an hour in one-way mileage pay for their regular hauls in excess of 80 miles and by 50 cents an hour in hourly rate, where applicable. The higher wage was also reflected in increased vacation pay as a percentage of the annual earnings. The record is unclear about differences between the two groups of employees as to backhaul pay and loading pay. It appears, likely however, that Champlain drivers, at least since April 23, 1990, have received a differential in loading pay, ranging from $2.50 for loading 9 vehicles, to $11.50 for loading 13 vehicles. In any event, the wage differential is illustrative of the fact that the wage market in the Champlain/Plattsburgh, New York area is more highly competitive than that in Texas, due in large part, to the higher rated Teamsters contracts with carriers in the area. The result is that drivers employed by Respondent in the Champlain facility have an expectation of greater compensation for driving and loading, in particular, than exists among the Dallas/Houston drivers.

These differences in seniority rosters, wages, hours, vacations, and dispatch procedures are all significant in determining that no accretion took place. *TRT Telecommunications Corp.*, supra; *Capp Express*, 220 NLRB 816 (1975); *Servair, Inc.*, 252 NLRB 670, 675 (1980).

As to labor relations, President Mickan clearly controls all aspects of labor relations nationwide, to the extent that in establishing the Champlain facility, Mickan succeeding in proposing to the Machinists, that the local New York State drivers receive a wage differential, apparently adequate to attract applicants for its operation.

The collective-bargaining history of Respondent is meager and shows that its relationship with the Machinists in Texas commenced as recently as March 1988, and its first agreement with the Machinists was not executed until March 1989, 5 months prior to the opening of the Champlain facility. Thus, the Teamsters petition when filed on April 16, 1990, was hardly disturbing a mature, stable collective-bargaining relationship.

In concluding that the Champlain employees were not accreted into the unit, I rely most heavily on the separate management and day to day supervision of those drivers, the absence of employee interchange between the Champlain and Texas facilities, the extreme geographic distance between the two groups, the separate seniority and working conditions, and the different wage market in which the Champlain drivers work and reside. Just as with respect to the Chicago personnel in *Brown Transport Corp.*, 296 NLRB 552 (1989), the Champlain drivers' immediate supervision and day-to-day concerns, separate wage rider, geographic separation, separate and nonoverlapping routes, and lack of contact on a regular basis with drivers employed at Respondent's Texas, and since April 1990, Atlanta terminals, all weigh heavily against a finding of accretion. Thus, although the Champlain group contained only 9 on its original seniority roster as compared to 23 in Dallas/Houston, I am persuaded that the Champlain drivers do not have such common interests with the drivers in the existing unit that they would have been included in that unit or covered by the 1988 contract had they been employed at that time.[6] Accordingly, I conclude that the employees in the Champlain facility were not lawfully accreted into the preexisting bargaining unit contained in the contracting parties' 1988 National Agreement.

Having determined that the Champlain drivers were not accreted into the preexisting unit, it follows that the Machinists could only have been recognized and achieved lawful status, as exclusive bargaining agent for those employees and entered into a collective-bargaining agreement on their behalf, by having represented an uncoerced majority of them at the time recognition and exclusive status was accorded it in late September and October 1989, *Garment Workers (Bernhard-Altman) v. NLRB*, 366 U.S. 731, 738, (1961). The issue is then posed whether, indeed, such was the case.[7]

The strong weight of the evidence leads me to conclude that by its conduct in directly soliciting designations and dues-checkoff authorizations, encouraging, even directing employee affiliation as a basis for receiving contract benefits, and by informing the employees that they had no choice in the selection of their representative, the matter, in effect, having already been predetermined, among other acts and conduct, Respondent rendered unlawful assistance to the Machinists, thereby tainting the cards executed by all or the employees who did so, and resulting in Respondent's unlawful recognition of the Machinists and extension of the parties' collective-bargaining agreement to include the Champlain facility, in violation of Section 8(a)(1) and (2) of the Act. See *Brown Transport Corp.*, supra. Each of the sequestered witnesses called by General Counsel told a similar tale, the totality of which added up to a systematic effort by Respondent management to unlawfully extend a preexisting bargaining relationship with the Machinists to the mutual benefit of each. For the Respondent, it meant dealing nationwide with one union, which, based upon its dealings in Texas, could be counted on not to make excessive or uncomfortable demands. For the Machinists, it meant extending its contract coverage to employees it had never met or solicited, thereby at the same time strengthening its position in a distant section of the country, and its treasury.

Of the nine original employees at the Champlain facility at the time Respondent recognized the Teamsters and extended the 1988 agreement to cover them, two, Lashway and Monto, never executed Machinists designation cards, one, McCall, did not sign his first cards until November 29, 1989, and McCall and the six others were coerced, induced, and solicited by management to execute both their designation and dues-checkoff authorization cards.

Van Operloo was told by Hall at his interview that the Machinists would be representing the drivers. Later, during his training in Scranton, Hall told him that the Respondent would not go Teamsters. The last day of training Hall solicited Machinists membership and bargaining designation from the trainees, including Forkey, Monto, and Lashway, with the statement that if they wanted to be a part of the Union and get the union benefits, they had to sign.

Monto recalled mention of the Machinists by Hall and/or the other consultant during his training and that Cook solicited his and the other drivers' signatures on Machinists designation and checkoff authorizations when they started by telling them this was the agreement with the Company, referring to the inadequate March 17, 1989 supplement, and you have to sign so I can forward them to Texas.

Forkey corroborated both Van Operloo as to Hall's reference to the Machinists as their Union and Cook's distribution of, and direction to, the original drivers to fill out the

[6] Respondent in its brief argues at p. 20 that accretion must be measured as of the date of the Charging Union's demand. The case law does not support such a conclusion. Neither case Respondent cites stands for such a proposition. While the second case cited, *GHR Energy Corp.*, 294 NLRB 1011 (1989), relies on the demand date for determining whether accretion took place, that date was the date alleged by General Counsel for violation of Sec. 8(a)(5). General Counsel here, appropriately relies on the events starting in late September 1989, when recognition was granted and the contract was extended.

[7] In its answer but not its brief Respondent asserts the complaint is barred by the limitation period contained in Sec. 10(b) of the Act. The charge was filed on March 22, 1990. Accordingly, all complaint allegations asserting violations occurring since September 22, 1989, are not subject to the 10(b) limitation. Par. VIII of the complaint asserts unfair labor practices running from a date 6 months prior to filing of the Charge. Neither General Counsel nor Respondent have adduced any evidence of Respondent having granting recognition to the Machinists prior to September 22, 1989. Even if recognition preceded September 22, the Teamsters would have had no way of learning of any relationship between the contracting parties until September 22, 1989, when Hall first conducted employment interviews in Plattsburgh. Respondent has failed to sustain its burden that the Teamsters had actual or constructive notice of its relationship, if any, with the Machinists prior to that date. See *Desks, Inc.*, 295 NLRB 1 (1989). In any event, all other acts of alleged unlawful assistance, including extension of the 1988 agreement, execution of the supplements, dues deductions, and execution of the 1990 agreement are properly in the case and subject to appropriate remediation. *Child Day Care Center*, 252 NLRB 1177 (1980); *Diamond International Corp.*, 229 NLRB 1314 (1977). *Hot Bagels & Donuts*, 227 NLRB 1597 (1977).

Machinists cards. He, Whitbeck, and Johnson all refer to a direction from management to attend a Machinists meeting in March 1990 which was never held, but for which preparation time they spent overnight locally, they were each financially reimbursed by Respondent.

Whitbeck, among other employees, was solicited twice, the first time by Cook at the October 25, 1989 meeting addressed by Mickan who informed the men that Safety Carrier already had a contract with the Machinists and that's what the Champlain employees would be.

Emory Johnson, William McCall, and David Demastrie, all among the original nine employees hired in mid-October 1989, echo the testimony of their brethren regarding Hall and Cook's solicitation efforts on behalf of the Machinists. Demastrie recalled Mickan's remarks at the October 25 meeting in Champlain informing the employees that the Machinists will charge no initiation fee and then being told by Cook to fill out his first set of cards.

Later employed drivers, among them Thomas Gomez, Gerald Derusha, and Ronald Hicks corroborated the roles played by consultant and agent Hall and the terminal manager successor Gray in continuing to solicit and direct Machinists affiliation. It is apparent that the Respondent effort to obtain new designation cards on behalf of Machinists Local 447 out of Lyndhurst, New Jersey, was consistent with, and in implementation of, the successor 1990 Agreement's revised union-security and recognition clause and bargaining unit clauses, now authorizing a local of the Machinists to represent employees in present or subsequently opened or acquired operations or terminals. Gray's explanation to various drivers that earlier cards had been lost was both disingenuous and dishonest. Her failure to testify and explain the discrepancy between her excuse for new solicitations and Respondent's production of so-called ''lost'' cards leaves the trier of the facts with the inference that she would have had no reasonable explanation for her deception. Her conduct lends added weight to my conclusion that Respondent engaged in a pattern of intimidation and deceit against employees to ensure that the Champlain facility became and remained a Machinists enclave.

That Respondent's scheme of unlawful Machinists support came from its highest levels of management is established not only by Mickan and Artkop's presence in Champlain on October 25 and Mickan's discussion there of Safety Carrier's relationship with the Machinists and its interest, desire, and decision to extend it to Champlain, but also by Cook's disclosure that it was Vianney Dumaline, marketing representative and de facto if not de jure eastern regional manager, who instructed him to get Machinists cards signed by the first three drivers hired for Champlain.

Other facts strengthen the pattern of unlawful assistance and support for the Machinists. The added Champlain wage supplement originated with Mickan in preliminary talks with the Machinists that had to antedate the opening in Champlain and thus Respondent's recognition of the Machinists in all likelihood preceded the hiring of any drivers at the Champlain facility. Respondent's attempt to apply the ''newly established terminal'' clause, article III,D, of the contract without employees or any evidence of union representation was unenforceable. *Safeway Stores*, supra at 952–953. *Save-It Discount Foods*, 263 NLRB 689, 695 (1982). In insisting on a distinction between informal and ''official'' recognition of the Machinists, Mickan was also giving lip service to the article III,C contract provision authorizing the Machinists to represent employees in any appropriate bargaining unit at their terminal locations upon a majority showing of designation cards, although these drivers were incorporated into the overall unit. As shown, all cards were procured by employer inducement, coercion, intimidation and an open avowal of preference for the Machinists, thereby tainting every one of them. *Ryder System, Inc.*, 280 NLRB 1024 (1986); *Sarah Newman Nursing Home*, 270 NLRB 663 fn. 2 (1984). The fact that many of the employer solicitations were before employment and well before 30 days of employment is also significant. *Ryder System, Inc.*, supra at 1046.

The 6-month delay in Machinists representatives first meeting with Champlain drivers following their achieving exclusive bargaining status, and the same representatives initial distribution of an Atlanta, Georgia supplement not fully applicable to local employer concerns, demands and conditions, are also facts which add to the legal conclusions I have reached here. Another surprising development was the premature extension of the 1988 Agreement. The Teamsters unfair labor practice charge was filed on March 22, 1990. While that fact may not explain the preparation of the March 17, 1990 Champlain supplement, or the new agreement itself, also dated March 17, 1990, the parties' subsequent supplement B, listing the date of signing as April 23, 1990, may be partially explained by the Teamsters charge. Surely, the union-security, recognition, unit provisions, and newly added union-shop clause show a heightened awareness of language and legalities designed in so far as possible to protect the parties from outside attack. In any event, the premature extension appears to be a suspicious act on the part of the signatories and this view is strengthened when one considers the inadequacy of Mickan's explanation, that the Machinists were seeking to incorporate local supplements in their agreement. That does not explain the changes in language earlier described nor does it provide a completely satisfactory explanation with regard to the need for supplements since Respondent was providing the Champlain wage differential from the outset of operations in October 1989. No Intervenor representatives testified so the matter of the premature contract extension is left fairly murky.

In any event, by entering into the original agreement, as well as the extension, and coercing employees to execute checkoff authorizations, under circumstances in which employees could reasonably believe their execution was necessary in order to receive the contract benefits and as a condition of employment, and, further, by deducting dues from employees' pay without evidence of any valid authorization from the employee, Respondent has independently violated the Act. *Mode O'Day Co.*, 280 NLRB 253, 255 (1986); *Herman Bros., Inc.*, 264 NLRB 439, 442 (1982); *General Instrument Corp.*, 262 NLRB 1178 (1982).

The enforcement of the dues-checkoff clause since March 1990, contained in a contract entered with a minority union, without more, similarly violates Section 8(a)(1) and (2) of the Act. *Ned West, Inc.*, 276 NLRB 32, 44 (1985); *Monfort of Colorado*, 256 NLRB 612, 614 (1981).

I conclude that the Respondent recognized the Machinists for the employees at the Champlain facility, extended the 1988 agreement to the employees there and agreed upon supplements to cover local wage and working conditions, at a

time when the Machinists did not represent an uncoerced majority of the drivers employed there. The execution of the supplements and the checkoff of union dues, with and without valid checkoff authorizations, constitute other aspects of Respondent's unlawful conduct.

CONCLUSIONS OF LAW

1. Respondent Safety Carrier is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Machinists and the Teamsters are labor organizations within the meaning of Section 2(5) of the Act.

3. By granting recognition to the Machinists as the exclusive bargaining representative of unit employees at the Champlain facility, extending the terms of the collective-bargaining agreement entered into on March 22, 1988, between Respondent Safety Carrier and the Machinists and effective until March 21, 1991, and its successor agreement effective from March 16, 1990, to September 30, 1993, to the unit employees at the Champlain facility and by maintaining and enforcing the said agreements for the employees at the Champlain facility, soliciting and directing employees and applicants for employment at the Champlain facility to sign authorization cards on behalf of the Machinists, and telling them that the Machinists represent the employees at the facility and that they had to sign as part of their employment or in order to receive union benefits, and deducting dues from the earnings of the employees at the Champlain facility and remitting the same to the Machinists in enforcement of the collective-bargaining agreement described, Respondent Safety Carrier has rendered, and is rendering, unlawful aid, assistance and support to the Machinists, and has thereby engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) and (2) of the Act.

4. The aforementioned unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent engaged in certain unfair labor practices, I will recommend that it be ordered to cease and desist therefrom and to take certain affirmative actions designed to effectuate the purposes and policies of the Act.

Having found that Respondent Safety Carrier unlawfully granted recognition as exclusive bargaining representative of an uncoerced majority of employees at the Champlain facility to the Machinists, I will recommend that Respondent be required to withhold recognition from the Machinists as to the employees at said facility, and to cease giving effect to any collective-bargaining agreement, modification, extension, renewal or supplemental agreement between the parties as to said facility until such time as the Machinists shall have been certified by the Board as the exclusive bargaining representative of any appropriate bargaining unit. However, nothing in this proposed Order will authorize or require the withdrawal or elimination of any wage increase, or other benefits, terms or conditions of employment which may have been established by any such agreement. Inasmuch as the evidence shows that the most recent designation cards solicited by Respondent of the Champlain facility employees lists Machinists Local ''447'' as the designated representative for purposes of collective bargaining, I will add the words ''successors or assigns'' to the designation of the Machinists Union as the contracting party labor organization the Respondent will be obligated to cease recognizing, contracting with or on whose behalf it may no longer withheld dues or other moneys from the earnings of employees, pursuant to contract.

I will further recommend that Respondent reimburse all present and former of its employees at the Champlain facility for all initiation fees, dues, or other moneys exacted from them by or on behalf of the Machinists pursuant to any dues-checkoff provision of any collective-bargaining agreement, or otherwise, together with interest thereon to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1172 (1987).[8]

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[9]

ORDER

The Respondent, Safety Carrier, Inc., Champlain, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Recognizing and bargaining with International Association of Machinists and Aerospace Workers, Local 1015, AFL–CIO, it successors or assigns, as the collective-bargaining representative of Respondent Safety Carrier's Champlain, New York facility employees, unless and until the labor organization has been certified by the National Labor Relations Board as the exclusive bargaining representative of any such employees in an appropriate bargaining unit.

(b) Giving effect to a collective-bargaining agreement with International Association of Machinists and Aerospace Workers, Local 1015, AFL–CIO, or its successors or assigns, with respect to the Champlain, New York facility employees referred to above, and any modifications, extensions, renewals, or supplements that may have been applied to those employees, provided that nothing in this Order shall require the withdrawal or elimination of any wage increases or other benefits, terms, and conditions of employment that may have been established pursuant to any such agreement.

(c) Assisting the International Association of Machinists and Aerospace Workers, Local 1015, AFL–CIO to become or remain the representative of the Champlain facility employees, including soliciting and directing employees and applicants for employment at the Champlain facility to sign authorization cards on behalf of Local 1015, or its successors or assigns, or telling applicants and employees that the Machinists represent Champlain facility employees or that they would have to join as part of their employment or in order to receive union benefits.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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[8] Under *New Horizons*, interest is computed at the ''short-term Federal rate'' for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621. Interest accrued before January 1, 1987 (the effective date of the amendment), shall be computed as in *Florida Steel Corp.*, 231 NLRB 651 (1977).

[9] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Reimburse all former and present employees employed at its facility terminal at Champlain, New York, for all initiation fees, dues, and other moneys, if any, paid by or withheld from them in the manner set forth in the remedy section of this decision.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of monies due under the terms of this Order.

(c) Post at its Champlain, New York facility copies of the attached notice marked ''Appendix.''[10] Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[10] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT recognize and bargain with International Association of Machinists and Aerospace Workers, Local 1015, AFL–CIO, or its successors or assigns, as the collective-bargaining representative of our Champlain facility employees unless and until the Union has been certified by the National Labor Relations Board as the representative of any such employees.

WE WILL NOT give effect to, or in any way enforce, the collective-bargaining agreement purporting to cover such employees at a time when the Machinists Local 1015, or its successors, or assigns, does not represent an uncoerced majority of employees in an appropriate bargaining unit, provided however that this will not require the withdrawal or elimination of any wage increases or other benefits, terms, and conditions of employment established by the agreement.

WE WILL NOT assist the Machinists Local 1015, or its successors or assigns, to become or remain the representative of our Champlain facility employees, including soliciting and directing employees and applicants for employment at the Champlain facility to sign authorization cards on behalf of Local 1015, or its successors or assigns, or telling applicants and employees that Local 1015, or its successors or assigns, represents Champlain facility employees or that they would have to join the union as part of their employment or in order to receive union benefits.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL reimburse all former and present Champlain, New York facility employees for all initiation fees, dues, and other moneys, plus interest, paid by them or withheld from them.

SAFETY CARRIER, INC.